statutes mentioned above seems to be to regulate sales of liquor, and to prevent, rather than to detect, abuses of the druggist's license. The fact that an incidental result may be to obtain evidence of illegal sales does not make the statute void. On the other hand, a statute, compelling an examination of brokers' books with a view to ascertaining whether or not taxes had been paid, was, it would seem properly, held unconstitutional.[9] And so in the principal case, a primary effect, if not a primary object, of the requirement is to compel the acknowledgment of facts which are likely to be the basis of a prosecution. While courts should guard against extending the privilege against self-incrimination, they are bound to recognize its existence, and it would seem that the statute in question was properly held unconstitutional.

It has been suggested that when the defendant takes out his license, he voluntarily assumes the obligation to give this information.[10] This argument can of course only apply where the license is obtained after the passage of the statute. And, even then, it is a mooted question how far the obtaining of licenses may be conditioned upon waiver of constitutional rights. Decisions as to the validity of conditions imposed by states upon foreign corporations seeking to do intrastate business furnish an interesting analogy.[11]

STATUTORY RESTRICTIONS ON WARRANTIES IN INSURANCE POLICIES. — In several of our states, statutes have been enacted, which limit the effect of untrue statements made in negotiating an insurance policy. These statutes provide that no policy shall be voided by a false representation, unless it be material to the risk or wilfully false.[1] Their purpose is to restrict the right of an insurance company to make the validity of the contract dependent upon the accuracy of answers to numerous frivolous questions.[2] Being remedial in their nature, the courts have construed them so as to apply as well to warranties as to collateral representations.[3]

It has also been asserted by way of *dictum*, that these statutes have abolished the common-law distinction between representations and

[9] People *ex rel.* Ferguson *v.* Reardon, 197 N. Y. 236. But see a criticism of this case in 21 HARV. L. REV. 621.

[10] See State *v.* Davis, 108 Mo. 666, 670. The holding of the case seems, however, correct.

[11] These decisions relate mainly to conditions that the foreign corporation shall not remove its actions to the federal courts. The state may take away the privilege of doing intrastate business for breach of this condition. Doyle *v.* Continental Ins. Co., 94 U. S. 535; Security Mutual Life Ins. Co. *v.* Prewitt, 202 U. S. 246. But an agreement not to remove, exacted as a condition precedent to doing such business, is void. Insurance Co. *v.* Morse, 20 Wall. (U. S.) 445; Barron *v.* Burnside, 121 U. S. 186. See 23 HARV. L. REV. 549.

[1] A typical statute is that of Pennsylvania: "No misrepresentation or untrue statement made in an application, made in good faith, shall effect a forfeiture or be a ground of defense, unless such misrepresentation or untrue statement relate to some matter material to the risk." PURD. DIG. 1953, § 66.

[2] Anderson *v.* Fitzgerald, 4 H. L. Cas. 484; Jeffries *v.* Life Ins. Co., 22 Wall. (U. S.) 47 (untrue statement that insured was single).

[3] White *v.* Conn. Mut. Life Ins. Co., Fed. Cas. No. 17,545; White *v.* Provident Savings Life Assur. Soc., 163 Mass. 108. The statute does not apply to promissory warranties. Gross *v.* Colonial Assur. Co., 121 S. W. 517 (Tex. Civ. App.).

warranties,[4] but it may be doubted whether such effect has actually been given them by the courts. That the fact warranted must be material, in the technical sense of that term, is well settled. The parties cannot make a fact material by an express stipulation,[5] but that question is to be determined by the jury,[6] or, if there is no dispute on the facts, by the court.[7] "A fair test of materiality of a fact is found in the answer to the question, whether reasonably careful and intelligent men would have regarded the fact, communicated at the time of effecting the insurance, as substantially increasing the chances of the loss insured against." [8] But beyond this the decisions have not applied the statute. Given the falsity and materiality of the fact represented, the common-law rule as to warranties applies, and the policy is avoided by the breach.[9] To this effect is a recent decision under a statute, which in terms provides that all warranties shall be deemed representations, and void the policy only when material or wilfully false.[10] *Continental Casualty Co.* v. *Lindsay*, 69 S. E. 344 (Va.). Where it clearly appeared to the court that a statement as to the relationship between the assured and beneficiary was false and material, the policy was voidable.

In these decisions an important distinction between warranties and representations is preserved. At common law a collateral representation does not avoid the policy unless, in addition to being false and material, it has affected the willingness of the underwriter to issue the particular policy in question, and whether it did or not is a question for the jury.[11] The reason that a policy is voided for misrepresentation, is that it is not just to hold the insurer to a contract that he would not have made, had he known the true facts. A warranty, on the other hand, is a part of the contract, and in the nature of a condition precedent.

For the above reason, it would seem that the effect of such enactments has been comparatively limited, in so far as it has removed the distinction between warranties and representations. It was always true that, like a warranty, a collateral representation of an immaterial fact would have the same effect as though material, if such fact were made the subject of inquiry by the insurer.[12] So, in this respect, warranties and repre-

[4] See Hartford Life Ins. Co. *v.* Stalling, 110 Tenn. 1, 7.

[5] Fidelity Mut. Life Ass'n *v.* Ficklin, 74 Md. 172; Hermany *v.* Fidelity Mut. Life Ass'n, 151 Pa. St. 17.

[6] Hermany *v.* Fidelity Mut. Life Ass'n, *supra;* Mobile Fire Dept. Ins. Co. *v.* Miller, 58 Ga. 420; Levie *v.* Metropolitan Life Ins. Co., 163 Mass. 117.

[7] Smith *v.* Northwestern Mut. Life Ins. Co., 196 Pa. St. 314.

[8] See Penn. Mut. Life Ins. Co. *v.* Mechanics' Savings Bank & Trust Co., 72 Fed. 413, 429.

[9] Mobile Fire Dept. Ins. Co. *v.* Miller, *supra;* March *v.* Metropolitan Life Ins. Co., 186 Pa. St. 629; Levie *v.* Metropolitan Life Ins. Co., *supra.* See also Penn. Mut. Life Ins. Co. *v.* Mechanics' Savings Bank & Trust Co., 72 Fed. 413, 419; Price *v.* Standard Life & Accident Ins. Co., 90 Minn. 264. *Contra,* Christian *v.* Conn. Mut. Life Ins. Co., 143 Mo. 460. The Missouri statute requires that the fact misrepresented should have contributed to the loss. Mo. Rev. Stat. 1899, § 7890. Also the court held bad a plea that did not allege reliance on the representation. The Ohio statute expressly provides that the policy shall not be voided, unless the misrepresentation induced the issuance of the policy. Oh. Rev. Stat. § 3625; Northwestern Mut. Life Ins. Co. *v.* Risley, 22 Oh. Cir. Ct. Rep. 160.

[10] Acts of 1906, ch. 112, § 28.

[11] Flinn *v.* Headlam, 9 B. & C. 693; Phœnix Life Ins. *v.* Raddin, 120 U. S. 183; Vivar *v.* Supreme Lodge of K. of P., 52 N. J. L. 455.

[12] Valton *v.* National Fund Life Ass. Co., 20 N. Y. 32.

sentations are equally affected. The result is that the statute prescribes a rational limit to those facts which may be made the subject matter of either a warranty or representation that will avoid the policy. Warranties still remain in the nature of conditions precedent, and the issue of reliance thereon is not involved. That this is an important distinction, is evident, when we consider that, where breach of warranty is the defense, there is one less issue of fact to go to a jury always ready to give a verdict unfavorable to the insurance company.[13]

DOUBLE TAXATION OF INHERITANCE OF PERSONALTY. — Through differences in their express terms and different interpretations which the courts have given general terms, state inheritance taxes on personal property are divisible into three distinct classes: (1) those covering all personalty actually within the state,[1] (2) those taxing all personalty, wherever located, of a decedent domiciled in the state,[2] and (3) those including all personalty in the state and such without as belonged to a decedent domiciled therein.[3] An inheritance tax is not a tax on property, but is the price exacted by the state for the privilege it affords in permitting property to be transmitted by will or descent.[4] Thus, clearly, the state where the property is located may tax its succession.[5] The right of the state of domicile to tax has usually been explained on the fiction of *mobilia sequuntur personam*, the same courts inconsistently supporting a tax on personalty without the state on this ground,[6] and one on a foreigner's property within the state on the ground that the property is actually in their control.[7] The only conceivable explanation of the right of the state of domicile to tax the succession of foreign personalty is that, almost universally, it furnishes the law according to which distribution is made.[8]

There is a tendency for states which are wholly unconnected with the succession to impose inheritance taxes. In several states succession to stock in a foreign corporation is taxed if the corporation has property in the state, even though the owner was domiciled elsewhere.[9] The

[13] Scottish Union & Nat. Ins. Co. *v.* Wade, 127 S. W. 1186 (Tex. Civ. App.). A statute required that materiality be submitted to the jury. The jury found that the amount of other insurance was immaterial. *Cf.* March *v.* Metropolitan Life Ins. Co., *supra*, where the court said the materiality of the same fact was too clear to leave to the jury.

[1] See *In re* Weaver's Estate, 110 Ia. 328; *In re* Joyslin's Estate, 56 Atl. 281 (Vt.).

[2] See Gallup's Appeal, 76 Conn. 617.

[3] See Callahan *v.* Woodbridge, 171 Mass. 595, and Frotheringham *v.* Shaw, 175 Mass. 59. These decisions and those *supra* are examples of the different interpretation courts have given the same words, the tax in all these states being on property "within the jurisdiction of the state."

[4] See Magoun *v.* Illinois Trust & Savings Bank, 170 U. S. 283, 288; State *v.* Dalrymple, 70 Md. 294, 299.

[5] Matter of Bronson, 150 N. Y. 1.

[6] See Frotheringham *v.* Shaw, *supra*.

[7] See Callahan *v.* Woodbridge, *supra*.

[8] Lawrence *v.* Kittredge, 21 Conn. 577; Wilkins *v.* Ellett, 108 U. S. 256, 258.

[9] In Vermont the statute expressly taxes all transfers of stock of foreign corporations with their principal place of business in the state. VT. PUB. STAT. (1906), § 876. In a number of states under general statutes such taxes are being claimed, if the corporation has property in the state. See BANCROFT, INHERITANCE TAXES, 19.